

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
Plaintiff,) 3:18-cr-00100-HDM-WGC
vs.)
ROBERT LIESSE,) MINUTES OF COURT
Defendant.) November 19, 2019

PROCEEDINGS: Motion Hearing Re: All Pending Motions

PRESENT: THE HONORABLE HOWARD D. MCKIBBEN, SENIOR U.S. DISTRICT JUDGE

DEPUTY CLERK: Paris Rich **REPORTER:** Kathy French

COUNSEL FOR PLAINTIFF: James Keller, AUSA and Andolyn Johnson, AUSA

COUNSEL FOR DEFENDANT: Chris Frey, AFPD and Kate Berry, AFPD

At 8:59 a.m., the Court convenes.

The Defendant (on bond) is present with counsel, Chris Frey and Kate Berry.

On behalf of the Government, James Keller and Andolyn Johnson are present.

The Court presents a revised trial schedule for this week and advises there will be no break in trial on Thursday, November 21, 2019. The Court will now be available the full day of Thursday, November 21, 2019 and the matter will continue to Friday, November 22, 2019 at 8:30 a.m. with possibly a break for the day at approximately 2:00 p.m., and then continue into Monday, November 25, 2019.

The Court addresses ECF No. 71 Defendant's SEALED Second Motion to Dismiss, the Government's SEALED Response (ECF No. 78), and the Government's SEALED Affidavit filing at ECF No. 81. On behalf of the Defendant, Mr. Frey presents argument. At the Court's direction, Pages 1 through 3 of ECF No. 81 are provided to the Defense. On behalf of the Government, Mr. Keller presents argument. Mr. Frey presents brief response. At 9:21 a.m., the Court recites findings. **IT IS ORDERED, the Defendant's SEALED Second Motion to Dismiss (ECF No. 71) is DENIED. IT IS SO ORDERED.** Mr. Frey recites motion for the Government's Affidavit (Pages 1 through 3) of ECF No. 81 to be made part of the record. **IT IS SO ORDERED.**

The Court addresses the Defendant's Motion in Limine to Preclude Certain Evidence (ECF No. 53). On behalf of the Defendant, Ms. Berry presents argument. On behalf of the Government, Ms. Johnson presents argument. Ms. Berry recites response. At 10:05 a.m., the Court recites findings.

IT IS ORDERED, the Defendant's Motion in Limine to Preclude Certain Evidence (ECF No. 53) is GRANTED in part, DENIED in part, and RESERVED in part as follows:

With respect to the Defendant's statements to J.D. in person on July 26, 2018, IT IS ORDERED, the Defendant's Motion in Limine is DENIED, except to the extent a limiting instruction will be given to the jury. Counsel may submit a supplement limiting instruction prior to the start of the trial.

With respect to the notes, the video of Defendant delivering notes, and possession of BB gun, IT IS ORDERED, the Defendant's Motion in Limine is DENIED. The video may be received in its entirety. Further, if counsel seeks any stipulation that it was the Defendant in possession of the BB gun, the Court will most likely accept any such stipulation and not have the BB gun brought to the courtroom at trial.

With respect to the Defendant's possession of a 9mm firearm pawned prior to the charged events, IT IS ORDERED, the Defendant's Motion in Limine is DENIED as to the Defendant's statement. As to whether the Defendant possessed the gun and the statement made after the pawning of the gun, the Court RESERVES. The Government shall make no reference in the opening statements regarding the Defendant's statement that he had a gun or the pawning of the gun until the Court is able to hear the evidence outside the presence of the jury. Counsel shall advise the Court in advance of this testimony.

With respect to the May 2018 notes to the Defendant's father, IT IS ORDERED, the Defendant's Motion in Limine is GRANTED.

With respect to the Defendant's drug abuse history, IT IS ORDERED, the Defendant's Motion in Limine is GRANTED.

With respect to the Defendant's statement to the custodial jail officer, IT IS ORDERED, the Court RESERVES. The Government is precluded from making any reference to that statement in the opening statements and until the Court hears the evidence outside the presence of the jury. Counsel shall advise the Court in advance of this testimony. IT IS SO ORDERED.

Ms. Berry requests clarification of whether the order relating to Defendant's statements made to J.D. and the notes includes the epithets. The Court confirms the order includes the entire statements.

Ms. Berry outlines the new discovery in this matter produced last week by the Government. The Court and counsel confer. Ms. Berry further addresses the Government's prepared transcripts of the calls. The Court and counsel confer. The Court requests counsel to further review and confer regarding transcripts.

Mr. Frey readdresses the Court's previous hearing and ruling on the Defendant's motion to continue trial (ECF No. 67). Mr. Frey includes statements relating to the newly produced discovery, including body cam footage to still be reviewed by the Defense. The Court and counsel confer. The Court and counsel further confer with respect to the Government's witness scheduling.

IT IS ORDERED, Jury Trial currently set for Wednesday, November 20, 2019 at 9:00 a.m. is CONTINUED and RESET for Thursday, November 21, 2019 at 8:30 a.m. in Reno Courtroom 4 before Judge Howard D. McKibben. The Court will call for the jury at 9:00 a.m.

**IT IS FURTHER ORDERED, counsel shall advise the Court no later than 12:00 p.m. on Wednesday, November 20, 2019 regarding any believed errors in the transcripts of the calls.
IT IS SO ORDERED.**

The Court recites closing comments. The Defendant is continued on present terms of release pending trial.

At 10:41 a.m., the Court adjourns.

DEBRA K. KEMPI, CLERK

By: _____ /s/
Paris Rich, Deputy Clerk

FOLLOWING THE HEARING, IT IS ORDERED, the Government's Affidavit (Pages 1 through 3) of ECF No. 81 shall remain SEALED. IT IS SO ORDERED.